

AN ACT

ENTITLED, An Act to revise certain provisions regarding money lending.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 54-4-36 be amended to read as follows:

54-4-36. Terms used in this chapter mean:

- (1) "Advertisement," a commercial message in any medium that aids, promotes, or assists, directly or indirectly, the sale of products or services;
- (2) "Commission," the State Banking Commission;
- (3) "Director," the director of the Division of Banking of the Department of Revenue and Regulation;
- (4) "Division," the Division of Banking;
- (5) "Finance charge," the amount, however denominated, which is the direct or indirect cost payable by a borrower for a loan;
- (6) "Financing institutions," any person engaged in the business of creating and holding or purchasing or acquiring retail installment contracts;
- (7) "Installment loan," a loan made to be repaid in specified amounts over a certain number of months;
- (8) "License," a license provided by this chapter;
- (9) "Installment loan contract" or "contract," an agreement evidencing a installment loan transaction;
- (10) "Licensee," any person holding a license;
- (11) "Loan," any installment loan, single pay loan, or open-end loan which may be unsecured or secured by real or personal property;
- (12) "Payday loan," any short-maturity loan on the security of a check, any assignment of an

interest in the account of a person at a depository institution, any authorization to debit the person's deposit account, any assignment of salary or wages payable to a person. A short-maturity loan made in anticipation of an income tax refund is not a payday loan for purposes of this chapter;

- (13) "Regional revolving loan fund," a regional revolving loan fund with a service area of at least five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio of at least one million dollars, and which is governed by a board of directors that meets at least quarterly;
- (14) "Short-term consumer loan," any loan to any individual borrower with a duration of six months or less, including a payday loan. A title loan is not a short-term consumer loan for purposes of this chapter;
- (15) "Title lender," a regulated lender authorized pursuant to this chapter to make title loans; and
- (16) "Title loan," a loan for a debtor that is secured by a nonpurchase money security interest in a motor vehicle and that is scheduled to be repaid in a single installment.

Section 2. That § 54-4-58 be amended to read as follows:

54-4-58. The licensee shall disclose in any loan contract the following:

- (1) The amount and date of the loan;
- (2) The amount of the down payment, if any;
- (3) The dates any payments are due and the amount of payments;
- (4) A list of any property used to secure the loan;
- (5) Any liens or title filings required;
- (6) The method used to compute the charges;
- (7) An explanation of any fee or charge, including the cost of the loan as an annual

percentage rate (APR);

- (8) Any fee or charge that may be applied for delinquency;
- (9) The conditions for an extension of payment or maturity of the loan;
- (10) Refinancing requirements, including any fee or charge; and
- (11) The address and telephone number of the Division of Banking and that any improprieties in making the loan or in loan practices may be referred to the division.

The licensee shall provide a copy of the loan contract to the debtor. A violation of this section is a Class 2 misdemeanor.

Section 3. That § 54-4-65 be amended to read as follows:

54-4-65. No licensee may renew, rollover, or flip a short-term consumer loan more than four times. No renewal, rollover, or flip is valid unless, at the time of the renewal, rollover, or flip, the debtor pays the outstanding fee and reduces the principal amount of the loan as provided in this section. Upon the first renewal, rollover, or flip and each subsequent renewal, rollover, or flip, the debtor shall reduce the principal amount of the loan by not less than ten percent of the original amount of the loan.

Section 4. That § 54-4-40 be amended to read as follows:

54-4-40. Any person who engages in the business of lending money shall apply for a license as prescribed by this chapter. The applicant shall apply for a license under oath on forms supplied by the division. The application shall contain the name of the applicant's business, proof of surety bond, address of the business, the names and addresses of the partners, members, officers, directors, or trustees, and other information the director may consider necessary. The applicant shall pay an original license fee as set by rules of the commission promulgated pursuant to chapter 1-26 not to exceed one thousand dollars. If the application of an existing licensee is for an additional location, the application need only include the location and identity of the location manager, plus any changes

from the existing license, or such other information the director may consider necessary. The State of South Dakota, any political subdivision of the state, and any quasi-governmental organization created by an executive order of the State of South Dakota and any subsidiary of such organization; any nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury Community Development Financial Institution, Small Business Administration Certified Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37 is subject to this chapter but exempt from initial license fees, renewal fees, and surety bond requirements under this chapter.

Section 5. That § 54-4-42 be amended to read as follows:

54-4-42. The applicant shall submit with the application for a license a bond in an amount not to exceed the total of ten thousand dollars for the first license and two thousand five hundred dollars for each additional license. The bond shall be satisfactory to the director and issued by a surety company qualified to do business as a surety in this state. The bond shall be in favor of this state for the use of this state and any person who has a cause of action under this chapter against the licensee.

The bond shall be conditioned on:

- (1) The licensee's faithful performance under this chapter and any rules adopted pursuant to this chapter; and
- (2) The payment of any amounts that are due to the state or another person during the calendar year for which the bond is given.

The aggregate liability of a surety to all persons damaged by a licensee's violation of this chapter may not exceed the amount of the bond.

Section 6. That § 54-4-48 be amended to read as follows:

54-4-48. The director may issue a cease and desist order from any practice that does not conform

to the requirements set forth in this chapter or any commission rule, order, or condition imposed in writing, or any federal statute, rule, or regulation pertaining to consumer credit. A cease and desist order may be issued to any licensee or to any person engaging in the business of lending money without a license. A licensee aggrieved by such order may appeal pursuant to chapters 1-26 and 1-26D.

Section 7. That § 54-4-51 be amended to read as follows:

54-4-51. In addition to any other means provided by law for the enforcement of a restraining order or injunction, the court, in which the action is brought, may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records, as the court may deem reasonably necessary to prevent violations of this chapter. The receiver, when so appointed and qualified, shall control the custody, collection, administration, and liquidation of the property and business.

Section 8. That § 54-4-53 be amended to read as follows:

54-4-53. Any money received by the division pursuant to this chapter shall be deposited in the banking revolving fund.

Section 9. That § 54-4-55 be amended to read as follows:

54-4-55. Except for taxes on real property and license fees and other fees imposed by this chapter, the tax imposed in § 54-4-54 is in lieu of all other taxes and license fees, state, county, or local, upon the business of the licensee, or upon any money, credits, or other assets of the licensee whether tangible or intangible, and which money, credits, or other assets are used for or in connection with the conduct of business transacted in South Dakota. However, amounts determined to be in excess of business capital requirements are not exempt from other taxes.

Section 10. That § 54-4-57 be amended to read as follows:

54-4-57. The division may annually, or as often as the director considers necessary, conduct an

examination of business records and accounts of any licensee licensed under this chapter. The director may charge back to the licensee any cost associated with an on-site examination. The director may waive an on-site examination and only require an annual self-examination. If a licensee conducts a self-examination, the licensee shall provide any information requested under oath and on forms provided by the division by order or rule. The provisions of § 51A-2-35 apply to records and examination reports required under this chapter.

Section 11. That § 54-4-64 be amended to read as follows:

54-4-64. The provisions of this chapter do not apply to any person selling goods or services and providing financing for such goods or services.

Section 12. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

A title loan shall be evidenced by a written agreement in which a title lender agrees to make a title loan to a debtor and the debtor agrees to give the title lender a security interest in a motor vehicle owned by the debtor. The debtor shall give the title lender possession of the certificate of title to such motor vehicle. Except as otherwise provided in this chapter, the provisions of chapter 57A-9 apply to title loans and to persons engaged in the business of making title loans.

Section 13. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

Any title loan shall be for an initial term of no more than one month but may be renewed for additional one-month periods. No title loan may be renewed more than four times except as provided in this section. Upon the fifth renewal of a title loan, and through the eighth renewal, the debtor shall make payment of at least ten percent of the original principal amount of the title loan, in addition to any finance charges that are due. If at any renewal requiring a principal reduction, the debtor has not made previous principal reductions adequate to satisfy the current required principal reduction, and

the debtor does not pay at least ten percent of the original loan amount, the title lender may either declare the debtor in default or renew the title loan and defer the required principal payment for an additional period. However, no further finance charges may accrue or be earned against the principal amount so deferred. For purposes of this section, a renewal is any extension or continuation of a title loan for an additional period without any change to the title loan or its terms other than a reduction in principal. After the eighth renewal the title loan is due in full and no further finance charges or fees may accrue or be earned.

Section 14. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

If a debtor defaults in the repayment of a title loan, the title lender's sole remedy is to seek possession and sale of the motor vehicle securing the loan, and the title lender may not pursue the debtor personally in any action or proceeding for repayment of the loan or for any deficiency after the sale. The title lender shall return to the debtor any surplus obtained after the sale that is in excess of the amount owed on the loan after any reasonable expenses of repossession, storage, and sale, including court costs and attorney's fees have been deducted. The remedy limitation provided in this section does not apply in the following circumstances:

- (1) If a debtor obtains a title loan from a title lender under false pretenses by not disclosing the existence of a valid prior lien or security interest affecting the motor vehicle; or
- (2) If the debtor intentionally conceals, impairs, or destroys the collateral.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1209

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1209

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State